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FILED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973.

No. 73-1317

JAMES M. ROCHFORD, INDIVIDUALLY AND AS SUPERINTENDENT, CHICAGO POLICE DEPARTMENT; MARLIN JOHNSON, WILBUR N. DANIEL AND PAUL W. GOODRICH, INDIVIDUALLY AND AS MEMBERS OF THE CHICAGO POLICE BOARD; AND JAMES J. RIORDAN, INDIVIDUALLY AND AS CHIEF OF PATROL, CHICAGO POLICE DEPARTMENT,

Petitioners,

vs.

CONFEDERATION OF POLICE, INDIVIDUALLY AND ON BEHALF OF ITS MEMBERS, AND CLARENCE SHUEY, TONY MUGNOLO, STEVE L. SENO, EDWARD F. FINN, EDWARD McGEE AND CHARLES DuSHANE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The petitioners respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered November 29, 1973.

OPINIONS BELOW.

The opinions of the court of appeals and of the district court have not yet been reported. They are reproduced, respectively, in Appendix A and Appendix B of this petition.

JURISDICTION.

The judgment of the court of appeals was filed November 29, 1973. No petition for rehearing was filed, and this petition for certiorari is filed within 90 days of the filing of the opinion. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTION PRESENTED.

Whether a local government is barred by the Fifth and Fourteenth Amendments to the United States Constitution from taking disciplinary action against a police officer who refuses to answer questions before a federal grand jury.

RULES INVOLVED.

CHICAGO POLICE DEPARTMENT RULES.

IV. RULES OF CONDUCT.

In addition to the positive requirements of the foregoing sections, the following rules of conduct set forth expressly prohibited acts.

Rule 2. Any action or conduct which impedes the Department's efforts to achieve its goals, or brings discredit upon the Department.

Rule 5. Failure to perform a duty.

Rule 6. Disobedience of an order or directive, written or oral.

Rule 51. Failing to give evidence before the Grand Jury, Coroner's inquest, in court, or before any governmental administrative body, including the Police Board, when properly called upon to do so, or refusing to testify on the grounds that such testimony might incriminate the member, or refusing to sign a waiver of immunity when requested to do so by a superior officer.

STATEMENT OF THE CASE.

There are six individual respondents. All were charged by the Superintendent of the Chicago Police Department with failure to respond before a federal grand jury to questions which dealt with the performance of each officer while on duty as a policeman, a violation of Chicago Police Department Rule 51. Two of the respondents, Shuey and McGee, were charged as well with refusing to obey a direct order by a superior officer, a violation of Rule 6. Both were directed, by a superior officer, to reveal whether they had cooperated with a United States Grand Jury; each declined to answer on the ground that grand jury proceedings were secret and that any response to the question would breach that secrecy. The charges were subsequently sustained by the Police Board, after hearing, and the officers disciplined.

Suit was then brought by the individual respo. dents and by the Confederation of Police, individually and on behalf of its members. The district court, after hearing argument, granted respondents' motion for summary judgment, holding the relevant police rules unconstitutional, and issued an injunction directing the reinstatement of the individual respondents to their civil service positions in the Chicago Police Department.

The Court of Appeals for the Seventh Circuit affirmed the district court's judgment. Petitioners seek review of that affirmance.

REASONS FOR GRANTING THE WRIT.

I.

The Court of Appeals Has Held, for the First Time, That a Local Public Employer Is Barred by the Fifth and Fourteenth Amendments to the United States Constitution from Taking Disciplinary Action Against a Police Officer Who Refuses to Answer Questions Before a Federal Grand Jury. This Court Has Never So Held.

The opinion below held (A7) that "[t]hese discharges were clearly unconstitutional under the rulings of *Gardner* [v. *Broderick*, 392 U. S. 273 (1968)] and *Uniformed Sanitation Men* [v. *Commissioner of Sanitation*, 392 U. S. 280 (1968)]." Chicago Police Department Rule 51 was held to be "unconstitutionally invalid insofar as it denies the Fifth Amendment right to a public employee where there is a possibility of criminal prosecution. . . ." In so holding, the Court disregarded the functional difference between the situation where a prosecuting jurisdiction has it within its power to compel testimony because it is also the employer of the witness, and the situation where the prosecuting jurisdiction and the employing jurisdiction are distinct.

The Fifth Amendment provides that "No person . . . shall be compelled in any criminal case to be a witness against himself." This means that "[t]he Government may not use compulsion to elicit self-incriminating statements elicited by compulsion." *Murphy* v. *Waterfront Commission*, 378 U. S. 52, 57 n. 6 (1964). Here it was the federal government that had summoned the respondents before a federal grand jury, concerned with violations of federal law. The administrative discipline imposed, however, was not by the federal government but by a local government whose only interest was as employer. If a policy of requiring cooperation with public inquiries, even

though the policy is established by someone other than the prosecuting jurisdiction, is compulsory in the constitutional sense, then it clearly reaches private employers. Thus if a private employer discharges an employee for refusing to answer questions before a grand jury, either the employee must be reinstated, or the employee must be granted immunity from prosecution. Here, the City of Chicago stands in the same position as the private employer. In relying on the *Gardner-Uniformed Sanitation Men* line of cases, the Court of Appeals ignored the fact that in each of the cases there was only one jurisdiction involved—a state or its political subdivisions.

By ignoring the distinction, the Court has fashioned a rule that may be enjoyed, presumably, only by those who occupy the status of public employee. In *Uniformed Sanitation Men Association* v. *Commissioner*, 392 U. S. 280 (1968), Justice Fortas noted, at 284-5, that "public employees are entitled, *like all other persons*, to the benefit of the Constitution, including the privilege against self-incrimination." (Emphasis supplied.) But surely they are not entitled to privileges not shared by others. For what respondents enjoy, as a result of the opinion below, is a kind of "super citizenship" under which they alone, unlike "all other persons", have constitutionally guaranteed job security.

The Court of Appeals' holding also places a severe burden upon the employer jurisdiction that is not shared by the prosecuting jurisdiction. Noting that under *Gardner* and *Uniformed Sanitation Men* a public employee may be held to an accounting of their public trust, the Court of Appeals observed (A5-6) that

> "[a]fter such an 'accounting for public trust', the employee may be dismissed either on the basis of his answers or for refusal to answer. However, should the employee answer, his answers, under *Garrity* [v. *New Jersey*, 385 U. S. 493 (1967)], cannot be used against him in a subsequent criminal proceeding since they were the result of threat of discharge. In an 'accounting for public trust', therefore, the employee is faced with the choice of an-

> swering or being dismissed from his job, but he knows that, should he answer, he cannot be criminally prosecuted on the basis of his own testimony."

When the employer is also the prosecutor, discharge and prosecution are available alternatives. This is not the case where the employer is not the prosecutor. On the contrary, it is in the interest of the prosecuting jurisdiction to deny the employing jurisdiction relevant information concerning a possible breach of public trust in order to protect the possibility of prosecution.

The procedural formula permitting discharge or prosecution obviously contemplates one jurisdiction which is both employer and prosecutor. And the line of cases establishing that formula, culminating in *Lefkowitz* v. *Turley*, 38 L. Ed 2d 274 (1973), can only be read as traditional coercion cases, not as cases "transform[ing] possible federal prosecution into a source of absolute protected silence on the part of a state witness. . . ." *Murphy* v. *Waterfront Commission*, 378 U. S. 52, 98-99 (White, J., concurring).

Analysis of those cases begins with *Garrity* v. *New Jersey*, 385 U. S. 493, in which police officers had been warned, prior to interrogation by the state attorney general, that if they refused to answer questions they would forfeit their positions pursuant to state law and be thereafter ineligible for public employment. Following the warning, the officers answered the questions; some of the answers were used in subsequent criminal prosecutions. This Court reversed the convictions, finding that the testimony relied upon was involuntary in fact, that is, coerced testimony, within the meaning of prior decisions. Thus the majority opinion relied upon *Chambers* v. *Florida*, 309 U. S. 227, involving repeated or extended interrogation, *Haynes* v. *Washington*, 373 U. S. 503, involving lengthy illegal detention, and *Leyra* v. *Denno*, 347 U. S. 556, in which a psychiatrist induced a fatigued and ill prisoner to confess. In the latter case, the Court stated that the question of whether a confession is the result of coercion

> "can only be answered by reviewing the circumstances surrounding the confessions. We therefore examine the circumstances as shown by the undisputed facts of this case." *Id.*, 558.

While *Garrity* thus involved a new fact situation, it did not create a new constitutional principle independent of the need to make a factual determination of coercion. The Court simply found that when the prosecutor-employer used its power to discharge, for the purpose of eliciting incriminating testimony, the testimony so elicited was considered to be coerced.

Garrity was followed in *Gardner* v. *Broderick*, 392 U. S. 273, in which an assistant district attorney of New York informed a patrolman, before the grand jury, that pursuant to a statute similar to the one involved in *Garrity* the patrolman would either sign a waiver of immunity or forfeit for all time his public employment. The patrolman was subsequently dismissed for failure to sign the waiver. Again, this Court viewed the situation as "an attempt . . . to coerce a waiver of [Fifth Amendment] immunity . . . on penalty of the loss of employment." 392 U. S. at 279. The employer, as in *Garrity*, had told the patrolman to answer or be discharged. The factual situation thus led this Court to conclude that an employer with prosecutorial powers could not exploit its position, that to do so would amount to coercion.

Similarly, in *Uniformed Sanitation Men Association, Inc.* v. *Commissioner of Sanitation*, 392 U. S. 280, the State of New York, investigating into criminal activity, attempted to use its powers as employer to force testimony from its employees. Again, this Court's factual determination was that

> "the precise and plain impact of the proceedings against petitioners as well as of § 1123 of the New York Charter was to present them with a choice between surrendering their constitutional rights or their jobs." *Id.*, at 284.

The employees would, however, be subject to dismissal for their failure to account for their performance, "after proper proceed-

ings, which do not involve an attempt to coerce them to relinquish their constitutional rights." *Id.*, 285.

An examination of the facts in this case underlines the unavoidable conclusion that the disciplinary steps taken with respect to Rule 51 of the Chicago Police Department's Rules and Regulation were in no way part of an attempt to coerce a waiver of immunity, nor is the simple existence of the Rule itself coercive within the meaning of the Fifth Amendment.

Individual plaintiffs Seno, Finn, Mugnolo, and DuShane were charged with the failure to respond to questions put to them before the United States Grand Jury, questions which dealt exclusively with the performance of each officer while on duty as a policeman, and with respect to activities that could be carried on only because the plaintiff was a policeman. While the complete transcript of the grand jury's proceedings were not part of the Record, the following, taken from exhibits introduced by respondents, are characteristic questions:

> "Mr. DuShane, are you a member of the Chicago Police Department?"
>
> "Have you ever been a member of the Chicago Police Department?"
>
> "During the time that you were a member of the Chicago Police Department were you assigned to a Police District known as the 18th Police District?"
>
> "Mr. DuShane, while you have been a member of the Chicago Police Department and while in the course of your official duties ever threaten a businessman that you would take such action as would cause him to lose his license if you would not be paid money?"
>
> "Mr. DuShane have you while a member of the Chicago Police Department and while in the course of your official duties ever demanded money from any business on the threat that if he did not pay you such money you would cause an arrest to be made?" Plaintiffs' Exhibit 3f, p. 2; Appendix, p. A14.
>
> "Mr. Mugnolo, did you ever refer any people at the scene of an accident to an attorney by the name of Irwin Berkley?"

> "Mr. Mugnolo, did you ever receive any money from Irwin Berkley for referring accident cases to him?" Respondents' Exhibit 12, p. 2.

It is thus obvious, as a threshold proposition, that the questioning before the grand jury was "specifically, directly and narrowly relating to the performance of . . . official duties" *Gardner* v. *Broderick*, 392 U. S. 273, 278. Further, the officers were not directed or asked to waive their immunity. The United States Attorney has no authority to discharge police officers of the City of Chicago. No superior officer of the police department was present during the appearances before the grand jury. No incriminating testimony was elicited during the subsequent questioning by the Department.

The inescapable conclusion must be that neither the purpose nor the effect of the Department's action was to *coerce* self-incriminatory statements by the plaintiffs. On the contrary, the Department made a valid judgment, under circumstances where the element of coercion was not present, that the officers' lack of candor with respect to their duties severely restricted their usefulness to the Department.

The solitary recognition of these facts by the Court of Appeals occurs in footnote 2 of its opinion:

> "Appellants stress that the United States Attorney at the grand jury could not have discharged the policemen who were city employees. We deem this point to be wholly immaterial to the disposition of the case. The compulsive factor was no less real." (A6.)

The Court of Appeals thus finds that the mere existence of Rule 51 is a coercive "fact" sufficient to establish a constitutional violation. Yet no case is cited in support of so extravagant an expansion of the concept of coercion, and certainly nothing in *Garrity*, *Gardner*, *Uniformed Sanitation Men*, or *Lefkowitz* supports that conclusion. Decisive in all the cases were statutes that were, unlike Rule 51, mandatory in their application. Indeed, *Garrity* stated specifically that

> "the forfeiture-of-office statute is relevant here only for the bearing it has on the voluntary character of the statements used to convict petitioners in their criminal prosecutions." 385 U. S. at 496.

The *Garrity* opinion then went on to find that a mandatory statute, used by an employer with prosecutorial powers specifically for the purpose of eliciting otherwise protected testimony was coercive. The court below, however, did not make any such factual inquiry; rather, it assumed the very point in question —that is, whether Rule 51 as used by the police department was coercive in a constitutional sense.

II.

The Courts Below Erred in Failing to Consider the Important Public Interest in Police Integrity and the Unique Position of the Police.

A further unwarranted extension of the *Garrity-Gardner* line of cases accounts for the district court's treatment of the refusal by plaintiffs Shuey and McGee to respond to a direct order by a superior officer to reveal whether he had cooperated with the grand jury. Each man declined to obey on the ground that grand jury proceedings were secret and that any response to the question would breach that secrecy. However, under identical circumstances, the Supreme Judicial Court of Massachusetts has held that

> "a police officer who has claimed or claims the privilege [against self-incrimination] as to a matter under current investigation could be deemed unfit to work in any aspect of his job related to that or to a similar investigation. His superiors, therefore, had a right to ask if the claim had been made and the obligation of [the officer's] job was to answer." *Silverio* v. *Municipal Court of the City of Boston*, 247 N. E. 2d 379, 384 (Sup. Jud. Ct., Mass. 1969).

The considerations found relevant by the Supreme Judicial Court of Massachusetts were relevant here as well, not only to

respondents Shuey and McGee, but to the other respondents also. For by treating the relevant constitutional right as an absolute, the courts below rejected two related adjudicatory methodologies recognized by this Court.

First, in *United States* v. *Robel*, 389 U. S. 258 (1967), this Court was concerned with whether the United States Congress had

> "adopted a constitutional means in achieving its concededly legitimate legislative goal. In making this determination we have found it necessary to measure the validity of the means adopted by Congress against both the goal it has sought to achieve and the specific prohibitions of the First Amendment." *Id.*, n. 20.

In this connection it is relevant that Rule 51 is a police department rule, not a statute or ordinance reaching all public employment and public contract. It is narrowly limited only to police activity and as shown above was applied specifically to respondents' behavior as police officers and concerned only with respondents' carrying out of their duties as police officers.

A second methodology is found in *Pickering* v. *Board of Education*, 391 U. S. 563, decided seven days before *Gardner* and *Uniformed Sanitation Men*. In discussing the First Amendment, Justice Marshall wrote that

> "it cannot be gainsaid that the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." 391 U. S. at 568.

Thereupon, an elaborate examination was undertaken of the factual circumstances of the case with the conclusion "that the

interest of the school administration in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public." *Id.*, 573.

As in *Pickering*, Fifth Amendment cases since *Garrity* indicate that a weighing process is involved when the pursuit of a governmental interest submits an individual to a choice between silence and possible incrimination. *California* v. *Byers*, 402 U. S. 424, involved a "hit-and-run" statute requiring a motorist to stop at the scene of an accident and to identify himself. The California Supreme Court held that under the Fifth Amendment neither the disclosure nor its fruits could be used in any prosecution. This Court reversed. The Chief Justice's opinion began with the proposition that the issue "must be resolved in terms of balancing the public need on the one hand, and the individual claim to constitutional protections on the other." *Id.*, 427. Making that balance, this Court found no inroad upon the Fifth Amendment and held there need be no restriction upon the use of the disclosure.

Moreover this Court has upheld a notice-of-alibi rule in *Williams* v. *Florida*, 399 U. S. 78, stating that

> "The defendant in a criminal trial is frequently forced to testify himself and to call other witnesses in an effort to reduce the risk of conviction. When he presents his witnesses, he must reveal their identity and submit them to cross-examination which in itself may prove incriminating or which may furnish the State with leads to incriminating rebuttal evidence. That the defendant faces such a dilemma demanding a choice between complete silence and presenting a defense has never been thought an invasion of the privilege against compelled self-incrimination. The pressures generated by the State's evidence may be severe but they do not vitiate the defendant's choice to present an alibi defense and witnesses to prove it, even though the attempted defense ends in catastrophe for the defendant. However 'testimonial' or 'incriminating' the

> alibi defense proves to be, it cannot be considered 'compelled' with the meaning of the Fifth and Fourteenth Amendments." *Id.*, 83-84.

And in *McGautha* v. *California*, 402 U. S. 183, this Court considered the constitutionality of a unitary as opposed to a bifurcated trial in a capital case. It was argued that a defendant who wanted to testify as to punishment might expose himself on the issue of guilt. But again the contention was rejected that all compulsion to choose whether to testify is barred by the Fifth Amendment:

> "The criminal process, like the rest of the legal system, is replete with situations requiring 'the making of difficult judgments' as to which course to follow. McMann v. Richardson, 397 U. S. 759. . . . Although a defendant may have a right, even of constitutional dimensions, to follow whichever course he chooses, the Constitution does not by that token always forbid requiring him to choose. The threshold question is whether compelling the election impairs to an appreciable extent any of the policies behind the rights involved. Analysis of this case in such terms leads to the conclusion that petitioner has failed to make out his claim of a constitutional violation in requiring him to undergo a unitary trial." *Id.*, 213.

Interestingly, the dissent, in attacking the apparent retreat from the earlier cases, noted that "*Garrity* involved only employment rights." *Id.*, 240. And the question is posed, if the harsh choices imposed in the cases cited above do not infringe upon the Fifth Amendment right to freedom from compelled testimony, what can be said about "only employment rights"?

Taken together, the cases yield the following conclusions: the Fifth Amendment does not bar all choice; not all choice amounts to compulsion; that a balance must be struck (*Byers*), or an accommodation made (*Robel*), between legitimate public needs and the right to be silent. In so doing, the following should be considered:

> "There is no profession whose members are more frequently tempted to misbehave, or provided with more opportunities to succumb to temptation, than law enforcement. The opportunities arise, on the whole, from the simple physical fact that policemen generally work alone or in pairs, out of sight of their colleagues and superiors. The temptations are more various and complicated. A chief one is that many people want to do things the law forbids, or do not want to do things the law demands, and are willing to pay money to, or do favors for, policemen for not enforcing laws." The Challenge of Crime in a Free Society, 115 (Washington, 1967).

In addition to the opportunities for corruption, the President's Commission on Law Enforcement and Administration of Justice has commented on the critical role played by police in society:

> "Exacting ethical standards and a high degree of honesty are perhaps more essential for the police than for any other group in society. Because the police are entrusted with the enforcement of the fundamental rules that guide society's conduct, a policeman's violation of the law or his corrupt failure to enforce it dishonors the law and the authority he represents. Dishonesty within a police agency can, almost overnight, destroy respect and trust that has been built up over a period of years by honest local government and police officials. Nothing undermines public confidence in the police and the process of criminal justice more than the illegal acts of officers. Support for the police in their work, and the bringing about of crucial changes such as those recommended by the Commission to strengthen the police, can easily be impaired by a belief that the police themselves are not taking every possible measure to eradicate corruption and unethical conduct." Task Force Report: The Police (Washington, 1967).

Thus the concern of the Department of Police over the failure of some of its members to cooperate with the federal grand jury. It was this consideration and not an attempt to coerce testimony that led the Department to take disciplinary steps.

Balanced against these important public interests is the view of the court below that the simple knowledge, via Rule 51, that one's employer frowns on a lack of candor where police activities are concerned, is an inherent violation of the Fifth Amendment. *Garrity* did not go so far, and that case must be recognized as the high water mark in judicial sensitivity to compulsion.

CONCLUSION.

For the foregoing reasons, a writ of certiorari should issue to reverse the judgment of the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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APPENDIX A.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

September Term, 1973 — September Session, 1973

No. 73-1543

CONFEDERATION OF POLICE, individually and on behalf of its members, and CLARENCE SHUEY, TONY MUGNOLO, STEVE L. SENO, EDWARD F. FINN, EDWARD McGEE and CHARLES DUSHANE,
Plaintiffs-Appellees,

v.

JAMES B. CONLISK, JR., individually and as Superintendent, Chicago Police Department; MARLIN JOHNSON, WILBUR N. DANIEL, PAUL W. GOODRICH and MORGAN F. MURPHY, individually and as members of the Chicago Police Board; JAMES M. ROCHFORD, individually and as First Deputy Superintendent, Chicago Police Department; and JAMES J. RIORDAN, individually and as Chief of Patrol, Chicago Police Department,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

73-C-563

JAMES B. PARSONS, *Judge.*

Argued September 14, 1973—Decided November 29, 1973

Before CASTLE, *Senior Circuit Judge*, and PELL and SPRECHER, *Circuit Judges*.

PELL, *Circuit Judge*. This is an appeal from an order of the district court which *inter alia* directed the defendants to reinstate the individual plaintiffs to their civil service positions in the Chicago Police Department. Plaintiffs are the Confederation of Police and six individually named police officers. The defendants are officials of the Police Department and members of the Police Board.

All of the individually named plaintiffs were subpoenaed to appear before a federal grand jury investigating allegations of criminal conspiracies and corruption among members of the Chicago Police Department. At the grand jury, each police officer was informed by the United States Attorney that whatever the witness said could be used against him. Each policeman was also advised of his Fifth Amendment privilege against self-incrimination. In reliance on the prior advice of counsel, each of the plaintiffs invoked the privilege and declined to answer questions. After the appearances at the grand jury, each of the police officers was summoned to appear before the Internal Affairs Division (IAD) of the Chicago Police Department. At this departmental inquiry, each policeman was directed by a superior officer to answer questions as to whether he had invoked the privilege against self-incrimination at his appearance before the grand jury. With a single exception, no police officer was questioned by the IAD concerning his "official duties," using that term in the sense of obligations ordinarily associated with police work as such.

All six police officers were suspended or discharged for violating certain rules of the Chicago Police Department by invoking the privilege against self-incrimination at the grand jury session. In particular, Rule 51 of the Police Department rules prohibited:

> "Failing to give evidence before the Grand Jury, Coroner's inquest, in court, or before any governmental administrative

body, including the Police Board, when properly called upon to do so, or refusing to testify on the grounds that such testimony might incriminate the member, or refusing to sign a waiver of immunity when requested to do so by a superior officer."[1]

Suit was then brought by the six individual police officers and by the Confederation of Police on behalf of its members challenging the propriety of the suspensions and firings. The district court granted the plaintiffs' motion for summary judgment and this appeal followed.

I.

Analysis of the applicable case law must begin with *Garrity* v. *New Jersey*, 385 U. S. 493 (1967). In *Garrity*, policemen were questioned at an investigatory hearing about alleged traffic ticket "fixing." Each policeman, after being told that he would be subject to discharge from office if he refused to answer, gave the requested information. The officers' answers were then used in subsequent criminal prosecutions in which the policemen were convicted. The Supreme Court reversed the convictions, holding that the threat of discharge was a form of compulsion, depriving the policemen of a free choice as to whether to answer. "[T]he protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office." 385 U. S. at 500.

---

1. The other pertinent rules are:

"IV. RULES OF CONDUCT.

"[T]he following rules of conduct set forth expressly prohibited acts.

* * * * *

Rule 2. Any action or conduct which impedes the Department's efforts to achieve its goals, or brings discredit upon the Department.

* * * * *

Rule 5. Failure to perform a duty.

Rule 6. Disobedience of an order or directive, written or oral."

In *Spevack* v. *Klein*, 385 U. S. 511 (1967), the companion case of *Garrity*, the Court held that an attorney could not be disbarred solely because he refused to testify at a judicial inquiry when his refusal was based on the ground that his testimony would tend to incriminate him. Justice Fortas, concurring, went on to state:

> "This Court has never held . . . that a policeman may not be discharged for refusal in disciplinary proceedings to testify as to his conduct as a police officer. It is quite a different matter if the State seeks to use the testimony given under this lash in a subsequent proceeding [as in *Garrity*]." 385 U. S. at 519-20.

In *Gardner* v. *Broderick*, 392 U. S. 273 (1968), and *Uniformed Sanitation Men Ass'n Inc.* v. *Commissioner of Sanitation*, 392 U. S. 280 (1968), the municipal employees involved had pursued an alternative course of action to that taken in *Garrity*. In *Gardner*, a policeman, pursuant to a subpoena, appeared before a grand jury investigating bribery and corruption in the police force. The police officer was advised of his privilege against self-incrimination but he was asked to sign a "waiver of immunity" after being told he would be discharged if he did not sign it. The officer in *Gardner*, unlike the policeman in *Garrity*, declined to testify and also refused to sign the waiver. He was then given an administrative hearing and discharged solely for his refusal to sign the waiver of immunity form. Similarly, in *Uniformed Sanitation Men*, municipal employees refused to testify or sign waivers of immunity when called before the city's Commissioner of Investigation, who was inquiring into improper activities by sanitation employees. As in *Gardner*, an administrative hearing was then held, after which the sanitation employees were discharged for refusing to testify.

A unanimous Court held the dismissals in both cases to be violative of constitutional rights. As the Court noted in *Gardner*, the policeman there "was discharged from office, not for failure

to answer relevant questions about his official duties, but for refusal to waive a constitutional right. He was dismissed for failure to relinquish the protections of the privilege against self-incrimination." 392 U. S. at 278. The employees in both cases were entitled to remain silent at the inquiries into the alleged improper conduct since "it was clear that New York was seeking . . . testimony from their own lips which, despite the constitutional prohibition, could be used to prosecute them criminally." 392 U. S. at 284.

Justice Fortas, writing for the Court in both *Gardner* and *Uniformed Sanitation Men*, expanded on his earlier statement in *Spevack* that the Court had never held that "a policeman may not be discharged for refusal in disciplinary proceedings to testify as to his conduct as a police officer." *Spevack* v. *Klein, supra* at 519. In *Gardner* and *Uniformed Sanitation Men*, Justice Fortas distinguished the situation then before the Court—where public employees were questioned by their employer only as to whether they exercised their Fifth Amendment privilege and were discharged solely for doing so in circumstances in which any testimony might have been used against them in criminal proceedings—from the situation in which employees were discharged after "an accounting of their use or abuse of their public trust." 392 U. S. at 284. Justice Fortas characterized the latter situation as one in which the public employer demands, with threat of discharge, that its employee "answer questions specifically, directly and narrowly relating to the performance of his official duties, without being required to waive his immunity with respect to the use of his answers or the fruits thereof in a criminal prosecution of himself." 392 U. S. at 278. In his footnote to this statement, Justice Fortas specifically noted that "the statements in my separate opinion in *Spevack* v. *Klein, supra*, at 519-20 . . . are expressly limited to situations of this kind." 392 U. S. at 278 n. 5. After such an "accounting for public trust," the employee may be dismissed either on the basis of his answers or for

refusal to answer. However, should the employee answer, his answers, under *Garrity*, cannot be used against him in a subsequent criminal proceeding since they were the result of threat of discharge. In an "accounting for public trust," therefore, the employee is faced with the choice of answering or being dismissed from his job, but he knows that, should he answer, he cannot be criminally prosecuted on the basis of his own testimony. As Judge Friendly noted in *Uniformed Sanitation Men Ass'n, Inc.* v. *Commissioner of Sanitation*, 426 F. 2d 619, 627 (2d Cir. 1970), *cert. denied*, 406 U. S. 961 (1972), the sequel to the Supreme Court decision:

> "[P]ublic employees do not have an absolute constitutional right to refuse to account for their official actions and still keep their jobs; their right, conferred by the Fifth Amendment itself, as construed in *Garrity*, is simply that neither what they say under such compulsion nor its fruits can be used against them in a subsequent prosecution."

In sum, then, the *Gardner* and *Uniformed Sanitation Men* decisions indicate that a public employer may discharge an employee for refusal to answer where the employer both asks specific questions relating to the employee's official duties and advises the employee of the consequences of his choice, *i.e.*, that failure to answer will result in dismissal but that answers he gives and fruits thereof cannot be used against him in criminal proceedings. *Kalkines* v. *United States*, 473 F. 2d 1391, 1393 (Ct. Cl. 1973); *Uniformed Sanitation Men Ass'n, Inc.* v. *Commissioner of Sanitation*, 426 F. 2d 619, 627 (2d Cir. 1970), *cert. denied*, 406 U. S. 961 (1972).

In the present case, the policemen declined to answer questions at a grand jury, although they knew that, under Rule 51 of the Chicago Police Department rules, they could be discharged for so doing.[2] When called before the IAD, the

2. Appellants stress that the United States Attorney at the grand jury could not have discharged the policemen who were city employees. We deem this point to be wholly immaterial to the disposition of the case. The compulsive factor was no less real.

policemen were not, with one exception,[3] asked specific, narrow questions relating to their official duties. Each was questioned, rather, only as to whether he had invoked the privilege against self-incrimination at the grand jury. Thereafter, the policemen were fired or suspended solely for invoking the Fifth Amendment at the grand jury. At no time, either at the grand jury or at the IAD inquiry, were the police officers informed that any information which they gave would not be used against them in criminal proceedings.[4] These discharges were clearly unconstitutional under the rulings of *Gardner* and *Uniformed Sanitation Men*. The IAD inquiry was in no sense an "accounting of public faith" as the questions were not "specifically, directly, and narrowly" related to official duties and the officers were not advised that their answers would not be used against them in criminal proceedings.

II.

Rule 51, to the extent that it denies police officers the privilege against self-incrimination where criminal prosecution may follow, is constitutionally invalid. That portion of it falls directly within the purview of *Gardner* and *Uniformed Sanitation Men*.

The district court held that Rules 2, 5 and 6 were unconstitutional as applied in this case. We agree with this determination.

3. The one question to officer Shuey was answered unequivocally.

4. Appellants argue that the IAD is not empowered to grant immunity from prosecution to the police officers. Such a power, however, is not necessary. In *Garrity* the Supreme Court indicated that the Fifth Amendment *itself* prohibited the use of statements or their fruits where the statements had been made under the threat of dismissal from public office. Therefore, by advising the officers that their statements, when given under threat of discharge, cannot be used against them in subsequent criminal proceedings, the IAD is not "granting" immunity from prosecution; it is merely advising the officers of the constitutional limitations on any criminal prosecution should they answer. *Uniformed Sanitation Men Ass'n, Inc.* v. *Commissioner of Sanitation*, 426 F. 2d 619, 627 (2d Cir. 1970), *cert. denied*, 406 U. S. 961 (1972).

Rules 2, 5, and 6 were used only in conjunction with Rule 51 in discharging the six policemen. The underlying "violation" in each case was the exercise of the privilege against self-incrimination before the grand jury, which was prohibited by Rule 51. Since we have found Rule 51 to be constitutionally invalid insofar as it denies the Fifth Amendment right to a public employee where there is a possibility of criminal prosecution, the use of Rules 2, 5, and 6 in conjunction with Rule 51 in such a circumstance was also invalid.

For the reasons above stated, the judgment of the district court is affirmed.

AFFIRMED.

APPENDIX B.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

CONFEDERATION OF POLICE, Individually, and CLARENCE SHUEY, TONY MUGNOLO, STEVE L. SENO, EDWARD F. FINN, EDWARD MCGEE and CHARLES DUSHANE,
Plaintiffs,

vs.

JAMES B. CONLISK, JR., individually and as Superintendent, Chicago Police Department; MARLIN JOHNSON, WILBUR N. DANIEL, PAUL W. GOODRICH and MORGAN F. MURPHY, individually and as member of the Chicago Police Board JAMES M. ROCHFORD, individually and as First Deputy Superintendent, Chicago Police Department, and JAMES J. RIORDAN, individually and as Chief of Patrol, Chicago Police Department,
Defendants.

Case No. 73 C 563

MEMORANDUM OPINION AND ORDER

This case is before me for a ruling on cross-motions by plaintiffs and defendants for summary judgment. There is no issue of material fact in the litigation.

Plaintiffs, herein, are the Confederation of Police (C. O. P.) which is a police organization, and six individually named police officers who have been suspended or discharged by the Police Department for having violated certain of the Chicago Police Department's Rules and Regulations. Specifically, the charges

against plaintiffs are as follows: plaintiff DuShane is held to have violated Rules 2, 5, 6 and 51; plaintiffs McGee and Shuey are held to have violated Rules 2, 6 and 51; and plaintiffs Finn, Mugnolo and Seno are held to have violated Rules 2 and 51. Each of the individually named plaintiffs was subpoenaed to appear before the Federal grand jury during grand jury investigations and each declined to answer questions asked by the United States Attorney on grounds of his right against self-incrimination, on the advice of counsel. (Pltfs. Exhs. 3a-3f.) After their grand jury appearance each plaintiff officer was interrogated by the Internal Affairs Division (I. A. D.) of the Chicago Police Department. At the time of the interrogations each plaintiff refused to answer questions concerning his testimony before the grand jury, although ordered to do so, in all cases, by a superior officer. Each plaintiff stated that the ground for refusal to comply with the request was the possibility of punishment by the Chief Judge of the Federal District Court, Edwin A. Robson, for violating the secrecy of the Federal grand jury. Plaintiff Shuey, who was suspended from his duties on July 21, 1972, upon hearing that Judge Robson had no objection to disclosure of the grand jury testimony, offered on February 2, 1973 via a letter, to answer all I. A. D. questions concerning his testimony. On February 5, 1973 a hearing was held by the Police Board concerning the charges. At that time plaintiff Shuey's offer to disclose his grand jury testimony was acknowledged. On or about April 4, 1973 plaintiff Shuey received notification of his discharge for violation of Rules 2, 6 and 51.

The circumstances under which the other plaintiff police officers were suspended or discharged are similar. Suffice it to say that all the individual plaintiffs, after having given testimony to the grand jury, admitted invoking the right against self-incrimination before the grand jury and refused to answer I. A. D. questions concerning such testimony.

The rules that are in issue are the following:

IV. RULES OF CONDUCT.

In addition to the positive requirements of the foregoing sections, the following rules of conduct set forth expressly prohibited acts.

Rule 2. Any action or conduct which impedes the Department's efforts to achieve its goals, or brings discredit upon the Department.

Rule 5. Failure to perform a duty.

Rule 6. Disobedience of an order or directive, written or oral.

Rule 51. Failing to give evidence before the Grand Jury, Coroner's inquest, in court, or before any governmental administrative body, including the Police Board, when properly called upon to do so, or refusing to testify on the grounds that such testimony might incriminate the member, or refusing to sign a waiver of immunity when requested to do so by a superior officer.

The individual plaintiffs state that they have suffered serious injury in that each has been suspended without pay, without insurance coverage and without unemployment compensation and plaintiffs Shuey and Mugnolo have been discharged.

Plaintiffs' major contention is that any rule which punishes the invocation of a police officer's right against self-incrimination is invalid on its face or as applied because it is inconsistent with the Fifth and Fourteenth Amendments to the United States Constitution. Plaintiffs buttress their position by citing the cases of *Gardner* v. *Broderick*, 392 U. S. 273, 88 S. Ct. 1913, 20 L. Ed. 1082 (1968), and its companion case, *Uniformed Sanitation Men Association, Inc.* v. *Commissioner of Sanitation*, 392 U. S. 280, 88 S. Ct. 1917, 20 L. Ed. 2d 1089 (1968).

In *Gardner*, a New York City patrolman claimed he had been unlawfully dismissed because he refused to waive his privilege against self-incrimination when pursuant to a subpoena he had appeared before a New York County grand jury which was investigating alleged police corruption. At the time, Gardner

was told that the proposed examination related to the performance of his official duties. He was advised as to his privilege against self-incrimination but was asked to sign a "waiver of immunity" after being told that he would be fired if he refused to sign such a waiver. He did so refuse and after an administrative hearing was discharged solely for his refusal, pursuant to § 1123 of the New York City Charter. The Supreme Court held that the precise question presented was whether a State may discharge an officer for refusing to waive a right which the Constitution guarantees to him. After a review of the applicable law the Court stated the following:

> "Here, petitioner was summoned to testify before a grand jury in an investigation of alleged criminal conduct. He was discharged from office, not for failure to answer relevant questions about his official duties, but for refusal to waive a constitutional right. He was dismissed for failure to relinquish the protections of the privilege against self-incrimination. The Constitution of New York State and the City Charter both expressly provided that his failure to do so, as well as his failure to testify, would result in dismissal from his job. He was dismissed solely for his refusal to waive the immunity to which he is entitled if he is required to testify despite his constitutional privilege." *Garrity* v. *State of New Jersey*, 385 U. S. 493, 87 S. Ct. 616, 17 L. Ed. 2d 562 (1967) pg. 278.

Of great significance to the case at bar are these words from the *Gardner* decision:

> "In any event, the mandate of the great privilege against self-incrimination does not tolerate the attempt regardless of its ultimate effectiveness to coerce a waiver of the immunity it confers on penalty of the loss of employment." Pg. 278.

In *Uniformed Sanitation Men Association, Inc., supra,* the Supreme Court held that the discharge of city employees for their refusal to sign waivers of immunity before the grand jury or for invoking their constitutional privilege against self-incrimination before an investigation commissioner who had advised

them that their answers could be used against them in a subsequent proceeding violated the privilege.

In the case at bar it must be emphasized that with the exception of plaintiff Shuey the I. A. D. questioning did not relate to plaintiffs' official duties. Instead, the interrogation concerned plaintiffs' refusal to answer questions asked by the United States Attorney at the grand jury proceeding. Plaintiff Shuey, did answer the one question which directly related to his official duties. The defendants, however, did the same thing with which the defendants were charged in *Uniformed Sanitation Men Association, Inc., supra.* The court there said at page 284:

> "They were entitled to remain silent because it was clear that New York was seeking not merely an accounting of their use or abuse of their public trust, but testimony from their own lips, which despite the constitutional prohibition could be used to prosecute them criminally."

Rule 51, to the extent to which it prohibits the use of the right against self-incrimination, is unconstitutional. That portion of it falls directly within the purview of *Gardner, supra* and *Uniformed Sanitation Men Association, Inc., supra.* Those cases unequivocally state that a public employee may not be punished for invoking the right against self-incrimination before a grand jury which, in effect, seeks information that will lead to criminal charges against him.

Here, plaintiffs' suspensions and dismissals arose as a direct result of their refusal to waive their Fifth Amendment rights before the grand jury.

> "Petitioners as public employees are entitled, like all other persons, to the benefit of the Constitution, including the privilege against self-incrimination." *Gardner, supra; Garrity* v. *New Jersey, supra.* Cf. *Murphy* v. *Waterfront Commission,* 378 U. S. 52, at 79 (1964).

I do not move in this direction easily where police officers are concerned. They, like other law enforcement agents, are involved in the constant surveillance of the personal affairs of

the members of the general public. They seek out crime before it is committed and prevent it. They develop evidence of crime after it is committed so that its prosecution can be effective. While their work is circumscribed by guarantees that members of the general public not be deprived of life, liberty or property without due process of law, they nevertheless are armed with an authority over people so great that were there not effective procedures for self-discipline the people could find themselves enslaved by their own protectors. Other public officials clearly stand within the body politic in their exercise of the Fifth Amendment right. Policemen and law enforcement agents, if they do so stand, by virtue of their role in society, understandably cause serious questions to arise as to whether or not to them the right against self-incrimination should be extended.

The concept of public trust is not that with which I am concerned. What carries more relevance is the extent to which the general public, in the interest of its own safety and good order, must provide police power with unmonitored authority to restrain freedom and privacy. As police agencies demand and receive, either through overt grant or acquiescence, more and more of such authority in order to be effective, need they not be held to give up progressively more and more of their own personal rights and Constitutional protections? What we must look to here is a balancing on the one side of the universality of the Great Writ, and on the other side, the consequences of seeking to stratify by degrees its availability to the various segments of our population. I hold that as reprehensible as might be found that the conduct of the plaintiffs may have been, which set the stage upon which this cause of action eventually appeared, the importance to the whole of us and our survival as a civilized people, of the right of everyone, including these defendants, to never be made to be a witness against himself, is too great to be watered down by exceptions. For whomever they may be, including these plaintiffs, this protection against tyranny must be without exception.

Rule 51 is unconstitutional insofar as it denies police officers the right against self-incrimination. They cannot be deemed to have signed this right away even though in accepting the job they were perfectly aware of every word in Rule 51. No one can be deemed inferentially to have waived this right.

It is to be noted that this finding does not disturb the rest of the language of Rule 51.

Plaintiffs contend that Rule 2 is facially invalid because it is unconstitutionally vague. The action or conduct prohibited being that "which impedes the Department's efforts to achieve its goals" or that which "brings discredit upon the Department."

Defendants state that if there were to remain any "difficulties of precise definition" as to Rule 2 such difficulties would be ameliorated by defendants' Exhibit 1 in which the goals and duties of the Chicago Police Department are enumerated.

In *Soglin* v. *Kauffman*, 418 F. 2d 163, 166 (7th Cir., 1969) the Seventh Circuit found that a rule which prohibited "misconduct" and used that term as a standard for disciplinary action by the University of Wisconsin was invalid because it was based upon "nonexistent or unconstitutionally vague standards."

A similar attack upon the constitutionality of a Chicago Police Department regulation was upheld in *Muller* v. *Conlisk*, 429 F. 2d 901, 904 (7th Cir. 1970) and both the *Soglin* and *Muller* cases were followed in *Zekas* v. *Baldwin*, 334 F. Supp. 1158, 1161 (E. D. Wisc. 1971) in which the District Court stated:

> ". . . that an attempt to discipline an employee under a vague or overbroad regulation must necessarily fail without regard to whether the specific conduct prompting the discipline is in fact protected by the First Amendment."

However, as to Rule 2 the issue need not be decided. It may very well be that other circumstances surrounding their employment, day-to-day instructions, and other rules themselves establish within the Chicago Police Department a basis upon

which these rules would not in fact be found to be vague and that the cases cited may or may not be found distinguishable on their facts.

I need not go that far to merely conclude that the use of Rules 2, 5 and 6 which in this case was entirely in connection with that part of Rule 51 which I now find unconstitutional would also be a collateral denial of the right to protection of the Fifth Amendment.

The failure to perform a duty under Rule 5 and the disobedience of an order under Rule 6 as well as the allegations under Rule 2 rest on the premise of a violation of Rule 51. Plaintiffs' refusal to discuss the conduct engaged in due to their belief that they were protected by the Fifth and Fourteenth Amendment was warranted. *Gardner* v. *Broderick, supra,* clearly holds that the sole lawful inquiry defendants may direct to plaintiffs is that which "specifically, directly and narrowly relates to the performance of his official duties." (392 U. S. at 278.) Such was not the case herein. Disposition of the charges under Rules 2, 5 and 6 must be governed by whatever disposition is made to plaintiffs' constitutional challenge to Rule 51. There can be no duty to forego the right to self-incrimination under the facts of this case and it must necessarily follow that since all of the charges against plaintiffs rest on the basis of their alleged violations of Rule 51 all of the charges must be held to be improper.

For the foregoing reasons, I find that plaintiffs' motion for summary judgment must be granted and defendants' cross-motion for summary judgment must be denied and accordingly, the same is hereby ordered, adjudged and decreed.

Injunction Order

Judgment having been entered for the plaintiffs and against the defendants as to the issues raised in the Complaint and the pleadings herein, and in implementation of said judgment, the

Court hereby enters its injunctive order against the defendants as follows:

> Wherefore cause having been shown, judgment is hereby entered permanently enjoining and restraining defendants from penalizing plaintiffs in any way for their assertion of their rights against self-incrimination and are ordered to reinstate plaintiffs to their jobs with the same rank, seniority and other conditions of employment as at the time of suspension or discharge. Defendants are also ordered to pay plaintiffs' back wages and are required to enter into plaintiffs' records the fact of this order and its effect of setting aside and holding for naught the charges for violation of Rules 2, 5, 6 and 51.

ENTER:

JAMES B. PARSONS,
James B. Parsons,
United States District Judge.

Dated: June 7, 1973

MINUTE ORDER ENTERED JUNE 13, 1973.

Enter order nunc pro tunc June 7, 1973 showing injunction order signed as a separate order.

Defendant's motion to stay injunction order entered June 7, 1973, is denied, except requirement therein to pay back wages to individual plaintiffs.

Enter order directing defendants to impound back wages of individual plaintiffs.

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No. 73-1317

In the

Supreme Court of the United States

OCTOBER TERM, 1973

JAMES M. ROCHFORD, Individually and as Superintendent, Chicago Police Department; MARLIN JOHNSON, WILBUR N. DANIEL and PAUL W. GOODRICH, Individually and as Members of the Chicago Police Board; and JAMES J. RIORDAN, Individually and as Chief of Patrol, Chicago Police Department,

Petitioners,

vs.

CONFEDERATION OF POLICE, Individually and on behalf of its Members, and CLARENCE SHUEY, TONY MUGNOLO, STEVE L. SENO, EDWARD F. FINN, EDWARD McGEE and CHARLES DuSHANE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION

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IN THE

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BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinions of the Court of Appeals and of the District Court are not yet reported. They are reproduced in the appendix to the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Can policemen be discharged for invoking the Fifth Amendment privilege against self-incrimination before a Grand Jury in response to questions seeking information for use in possible prosecutions of them?

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

The Chicago Police Department's Rules of Conduct are set out in the Petition at page 2.

STATEMENT OF THE CASE

The individually named respondents are police officers who were subpoenaed to appear before a federal grand jury investigating allegations of criminal conspiracies and corruption among members of the Chicago Police Department. At the grand jury, each police officer was informed by the United States Attorney that whatever the witness said could be used against him. Each policeman was also advised of his Fifth Amendment privilege against self-incrimination. In reliance on the prior advice of counsel, each of the plaintiffs invoked the privilege and declined to answer questions. After the appearances at the grand jury, each of the police officers was summoned to appear before the Internal Affairs Division of the Chicago Police Department. At this departmental inquiry, each policeman was directed by a superior officer to answer questions as to whether he had invoked the privilege against self-incrimination at his appearance before the grand jury. With a single exception, no police officer was questioned by the Internal Affairs Division concerning his official duties, using that term in the sense of obligations ordinarily associated with police work as such.*

All respondents were suspended or discharged thereafter for violating police department rules by invoking the privilege against self-incrimination at the Grand Jury session.

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* The sole exception was a question asked of Respondent Shuey which related to his conduct of official duties. That question was answered unequivocally.

THE REASON THAT THE WRIT SHOULD BE DENIED

The Petition for Writ of Certiorari should be denied because the opinion of the Seventh Circuit Court of Appeals in this case is rendered in conformity with all applicable decisions including *Lefkowitz* v. *Turley*, ... U.S. ....., 38 L. Ed. 2d 274 (Nov. 19, 1973). The Seventh Circuit's opinion leaves no unsettled Fifth Amendment question requiring the attention of this Court.

CONCLUSION

For the foregoing reason, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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